

CHESAPEAKE BAY CRITICAL AREA LAW

ADMINISTRATIVE VARIANCE APPLICATION INSTRUCTIONS AND INFORMATION

I. Who May Apply for an Administrative Variance

Any applicant for a project involving a minor subdivision, a building permit, a grading permit, or an individual who proposes a project not requiring a permit, that is not in compliance with the Chesapeake Bay Critical Area law or regulations may apply for an administrative variance. An applicant for a development exempted under Section 32-4-106 of the Baltimore County Code (i.e., Limited Exemptions) or which qualifies for a waiver to the hearing officer's hearing under Section 32-4-107(b) of the Code may also apply for such a variance.

II. When to Apply for an Administrative Variance

If a variance is needed for a proposed project or activity, this variance must be applied for prior to initiating the project or activity in order for the project site to be in compliance with the Critical Area Law. Processing of plans and permits necessary to carry out the project or activity cannot be completed by Environmental Impact Review until after the variance has been approved. Therefore, we recommend you apply for a variance well in advance of when you need approval of a project, a development plan, a minor subdivision plan or a permit to allow sufficient time for the variance application to be reviewed, and in case you need to make revisions if the variance is disapproved.

Authority, Baltimore County Code and Code of Maryland Requirements

The following sections of the Baltimore County Code specify the authority and conditions under which the director of the Department of Environmental Protection and Sustainability (EPS) may grant variances to the Chesapeake Bay Critical Area law. They also specify the director's authority to require variance approval conditions, the requirement to place notice of an applicant's variance proposal in a paper of general circulation, and the right of an aggrieved person to appeal the director's decision.

The pertinent section of the Code of Maryland (COMAR) referenced in the Baltimore County Code is COMAR 27.01.12. The provisions of COMAR 27.01.12 for how variance applications are evaluated are attached to these instructions for your use. Variance requests are also subject to all provisions of Natural Resources Article § 8-1808(d), which is also attached to this application.

Section 33-2-205 Variance

(a) *In general.* Notwithstanding Section 32-4-231(a)(4) of the Code, the Director of the Environmental Protection and Sustainability may grant a variance from the requirements of this title, in accordance with the Chesapeake Bay Critical Area Commission criteria concerning variances under COMAR 27.01.12 and notice requirements under COMAR 27.03.01, if a proposed development is:

(1) Exempted from review and approval under Section 32-4-106 of the Code; or

(2) Granted a hearing waiver under Section 32-4-107(b) of the Code.

(b) *Notice.* Notice of an applicant's variance proposal shall be published once in a newspaper of general circulation in the county 15 days before variance approval.

(c) *Conditions of approval.* The Director of Environmental Protection and Sustainability may require conditions for variance approval, including site design conditions or mitigation, to minimize adverse impacts on water quality or fish, wildlife, or plant habitat.

(d) *Appeals.* A person aggrieved or feeling aggrieved by a decision of the director of EPS made under subsection (a) of this section may appeal the decision de novo to the County Board of Appeals.

(e) *Regulations.* The Director of Environmental Protection and Sustainability, in accordance with Article 3, Title 7 of the Code, may adopt regulations for the preparation and review of proposed development projects and other activities in the Chesapeake Bay Critical Area that are consistent with the Chesapeake Bay Critical Area law and Chesapeake Bay Critical Area criteria.

III. General Instructions and Processing

1. It is strongly recommended that you read the Chesapeake Bay Critical Area law and regulations prior to applying for a variance. Environmental Impact Review staff are available daily from 8:30 to 4:30 to assist you with questions about the law, and may be reached by calling 410-887-3980.
2. In order to apply for an administrative variance, you must fill out the attached application form. The form must be fully completed, or your application may be returned as incomplete.
3. Mail or return the completed application form to:

Regina Esslinger
Environmental Impact Review
Department of Environmental Protection
and Sustainability
111 W. Chesapeake Avenue, Room 305
Towson, Maryland 21204

4. Once an application has been received, it will be processed by Environmental Impact Review staff.
5. A "Notice of Critical Area Variance Application" will be sent to you under separate cover once we have determined your application is complete. You must submit this form for publication to a newspaper of general circulation in the county prior to obtaining variance approval. The

ad must appear in a paper once. Specific details about costs and deadlines for placing ads in the papers can be obtained by directly contacting the newspapers.

6. As required by the State Critical Area Commission, the Department must wait a minimum of fifteen (15) days after the notice has been published in a newspaper of general circulation in the county before granting final approval of any administrative variance in the Critical Area. To ensure that final approval of your variance is not delayed, please send a copy of the Certificate of Publication, which you will receive from the newspaper certifying the date that the ad was published, to Environmental Impact Review.
7. Once processing of the application has been completed, you will receive a letter indicating the Department's final decision about your variance request. If the letter indicates that your variance request has been denied, you must revise your project to be in compliance with the Chesapeake Bay Critical Area law and regulations in order to obtain approval of your project plans or permits from Environmental Impact Review. Please be advised that revising your project does not guarantee approval by other County Departments. Please also be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article § 8-1808(d)(6)(ii).

What to Submit With Your Application

A site plan must be submitted along with each administrative variance application showing sufficient information to allow for a proper evaluation of the request. The information listed below must be submitted with your Critical Area variance application in order for the application to be considered complete. Please be advised that the Department may require additional information on an as-needed basis for proper evaluation of a variance request. This information may include, but is not limited to, an alternatives analysis to justify the need for a variance and a conceptual mitigation plan.

1. A site plan to scale showing the following information:
 - a. Property lines.
 - b. Critical Area designation (i.e., Intensely Developed Area, Limited Developed Area, or Resource Conservation Area).
 - c. Forest and developed woodland, including individual trees and shrubs.
 - d. Existing and proposed contour lines if wetland or Critical Area buffer impacts are involved.
 - e. Existing and proposed structures including buildings, accessory structures, sidewalks, driveways, sewage disposal systems.
 - f. Existing and proposed lot coverage information.
 - g. Proposed limits of disturbance.
 - h. Existing and proposed utility lines and easements.
 - i. Existing and proposed piers, bulkheads, riprap, boat ramps, and other water dependent facilities; if these are the subject of the variance request.

- j. Stream, tidal wetland and non-tidal wetland delineations, as applicable.
 - k. The full extent of the Critical Area buffer in accordance with COMAR 27.01.09.01.
 - l. Quantification of any proposed Critical Area buffer impacts.
 - m. Any proposed Critical Area buffer (i.e. show where the critical area buffer would be located if the variance is granted.)
- 2. A buffer establishment plan or buffer management plan, if applicable, in accordance with COMAR 27.01.09.01-1 through 27.01.09.01-3.
 - 3. Photographs of pertinent portions of the site related to the variance request, if available.

Title 27
CRITICAL AREA COMMISSION

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Chapter 12 Variances

.01 Definition

In this chapter, “unwarranted hardship” means that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

.02 Local Program Requirements.

- A. A local jurisdiction shall include standards and procedures in its local Critical Area program for the granting of a variance to the provisions of Title 8, Subtitle 18, Natural Resources Article, Annotated Code of Maryland, COMAR 27.01, and its local program requirements.
- B. A local jurisdiction may establish additional, more restrictive standards for the granting of a variance consistent with the intent and purposes of this subtitle and the approved local Critical Area program.

.03 Standing.

In accordance with Natural Resources Article § 8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

.04 Variance Standards.

A local jurisdiction may not grant a variance unless the local jurisdiction makes written findings based on competent and substantial evidence that:

- A. In accordance with Natural Resources Article § 8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the local jurisdiction's program; and
- B. The applicant has satisfied each of the following variance provisions:
 - 1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in unwarranted hardship to the applicant;

- 2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- 3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- 4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- 5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- 6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area, and;
- 7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

.05 Variance Procedures.

- A. With due regard for a person's experience, technical competence, and specialized knowledge, a local jurisdiction may base its written findings required in Regulation .04 of this chapter on evidence introduced and testimony presented by:
 - 1) The applicant;
 - 2) The local jurisdiction or another government agency; or
 - 3) A person deemed appropriate by the local jurisdiction.
- B. Within 10 working days after a local jurisdiction's issuance of a written variance decision described in Regulation .04 of this chapter, the Commission shall receive a copy of the decision from the local jurisdiction.

.06 After-the-Fact Variance Procedures

- A. A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity, until the local jurisdiction:
 - 1) Issues a notice of violation; and
 - 2) Assesses an administrative or civil penalty for the violation.
- B. A local jurisdiction may not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle unless an applicant has:
 - 1) Fully paid all administrative, civil, and criminal penalties imposed under Natural Resources Article § 8-1808 (c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;
 - 2) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and

- 3) Performed the abatement measures in the approved plan in accordance with the local Critical Area program.
- C. If a local jurisdiction denies the requested after-the-fact variance, then the local jurisdiction shall:
- 1) Order removal or relocation of any structure; and
 - 2) Order restoration of the affected resources.

.07 Variance Appeals.

- A. A person with standing under Regulation .03 of this chapter may:
- 1) Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and
 - 2) Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.
- B. An appeal may be filed by:
- 1) A person aggrieved or adversely affected by a decision made under this chapter, including a government agency; and
 - 2) The Chairman, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.
- C. A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

NATURAL RESOURCES ARTICLE

Title 8 WATERS

Subtitle 18 CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA PROTECTION PROGRAM

§ 8-1808. Program Development.

(d) *Granting of variance.* -

(1) In this subsection, "unwarranted hardship" means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

(2) (i) Notwithstanding any other provision of law, the provisions of this paragraph shall apply to a proceeding that involves a variance for a development activity in the buffer under the requirements of:

1. This subtitle;
2. A regulation adopted under the authority of this subtitle; or
3. An approved program.

(ii) If a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding; and

(iii) A person that has standing under subparagraph (ii) of this paragraph may:

1. Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and
2. Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.

(3) (i) A local jurisdiction shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provision of an order, permit, plan, or local program in accordance with subsection (c)(1)(iii)15 of this section.

(ii) In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area that is subject to the application and for which a variance is

required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.

(iii) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, a local jurisdiction shall consider that fact.

(4) (i) An applicant has the burden of proof and the burden of persuasion to overcome the presumption established under paragraph (3)(ii) of this subsection.

(ii) 1. Based on competent and substantial evidence, a local jurisdiction shall make written findings as to whether the applicant has overcome the presumption established under paragraph (3)(ii) of this subsection.

2. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

A. The applicant;

B. The local jurisdiction or any other government agency; or

C. Any other person deemed appropriate by the local jurisdiction.

(5) A variance to a local jurisdiction's critical area program may not be granted unless:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant;

(ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and

(iii) Without the variance the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

(6) (i) Within 10 working days after a written decision regarding a variance application is issued, the Commission shall receive a copy of the decision from a local jurisdiction.

(ii) A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

(7) (i) A development activity commenced without a required permit, approval, variance, or special exception is a violation of this subtitle.

(ii) A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless the local jurisdiction first

issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

(iii) If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs.

(iv) Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

(v) If the local jurisdiction finds that the activity or structure for which a variance is requested commenced without permits or approvals and:

1. Does not meet each of the variance criteria under this subsection, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resources; or

2. Does meet each of the variance criteria under this subsection, the local jurisdiction may grant approval to the requested variance.

(8) This subsection does not apply to building permits or activities that comply with a buffer exemption plan or buffer management plan of a local jurisdiction which has been approved by the Commission.

(9) Notwithstanding any provision of a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the provisions of this subsection shall apply to, and shall be applied by, a local jurisdiction in the consideration, processing, and decision on an application for a variance.

**BALTIMORE COUNTY CHESAPEAKE BAY CRITICAL AREA LAW
ADMINISTRATIVE VARIANCE APPLICATION**

Part A. Applicant/Property Owner Information. Date: _____

Applicant(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Property Owner(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Contract Purchaser(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Engineer/Other Representative:

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Part B. Property Information.

Property Address/Location _____

Tax Account Number(s) _____

Subdivision _____

Tax Map _____ Parcel No. _____ Lot No. _____

Acreage/Lot Size _____ Zoning _____ Council District _____

Water: ☐ public ☐ private Sewer: ☐ public ☐ private

Part C. Variance Type.

Indicate the specific section(s) of the Baltimore County Code from which you are requesting a variance:

Part D. Project Description.

Briefly describe the proposed project or activity for which a variance is requested.

Part E. Alternates to Variance Request.

Briefly describe any alternates to requesting a variance which you considered, and why these alternates are not feasible.

Part F. Variance Provisions (COMAR 27.01.12.04 Variance Standards).

Briefly explain any special features of the site or special conditions or circumstances peculiar to the land or structure and how a literal enforcement of the Critical Area regulations relative to these special features, conditions, or circumstances would result in unwarranted hardship.

Part F. Continued.

Briefly explain how a literal interpretation of the Critical Area regulations would deprive you (the property owner) of a use of land or a structure permitted to others in accordance with the provisions of the Critical Area program.

Briefly explain how granting of the variance would not confer upon you (the property owner) any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area.

Part F. Continued.

Briefly explain how the variance request is not based upon conditions or circumstances that are the result of actions by you (the property owner).

Briefly explain how the request does not arise from any conforming or nonconforming condition on any neighboring property.

Briefly describe how the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. Include any proposed mitigative measures to minimize impacts to these resources.

Part F. Continued.

Briefly explain how the granting of the variance would be in harmony with the general spirit and intent of the Critical Area regulations.

Part G. Additional Information.

Use this space to provide any other information about the site or project pertinent to this variance request. Attach additional sheets if necessary.

Part H. Signatures.

All persons having legal or equitable interest in the property must sign below. Unsigned applications will be returned to the applicant as incomplete.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of this application are true and correct to the best of my/our knowledge, and that the application contains names and addresses of all persons having legal or equitable interest in the property.

Applicant Signature Date

Applicant Signature Date

Property Owner Date
Signature

Property Owner Date
Signature

Property Owner
Printed Name

Property Owner
Printed Name

Contract Purchaser Date
Signature

Contract Purchaser Date
Signature

Contract Purchaser
Printed Name

Contract Purchaser
Printed Name